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TAN SRI M RAMASAMY v. R YUNESWARAN & ORS

HIGH COURT MALAYA, MUAR
MOHD RADZI ABDUL HAMID J
[ELECTION PETITION NO: JB-26PP-1-01-2023]
19 APRIL 2023

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Abstract – *The court cannot set an election petition for trial merely to satisfy an inquiry on whether the petitioner could have won the election based on general allegations, conjectures and incomplete facts. An election petition could only be brought to trial after sufficient, clear, precise and certainty of material facts disclosing the grounds of cause of action are pleaded in the petition. In this case, preliminary objections raised by the respondents were upheld and the election petition was dismissed for non-compliance with the requirements of the Election Offences Act 1954 and the Election Petition Rules 1954.*

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ELECTION: *Petition – Application to declare election null and void – Preliminary objections – Petition's non-compliance of Election Offences Act 1954 and Election Petition Rules 1954 – Whether preliminary objections ought to be upheld – Whether petition ought to be dismissed*

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The petitioner was a candidate for Barisan Nasional in the 15th General Election for the Parliament constituency of Segamat whilst the first respondent was the candidate for Pakatan Harapan. The first respondent won a majority of 5,669 votes over the second-highest number of votes, 17,768 votes garnered by the petitioner and was declared to be the duly elected member of Parliament for the Segamat constituency. Following his loss, the petitioner presented this election petition by virtue of s. 34(b) of the Election Offences Act 1954 ('Act'), seeking (i) a declaration that the Parliamentary Election for Segamat was void; (ii) a declaration that the first respondent was not duly elected or ought not to have been returned; (iii) there was a breach of ss. 5(1) and 6(3) of the Act whereby the security of the ballot papers and the secrecy of election had been breached; (iv) an order, pursuant to reg. 26 of the Election (Conduct of Elections) Regulations 1981 ('Regulations') for an order to copy of inspect election documents pertaining to the 15th General Election at the Segamat Parliamentary constituency; (v) that the Election should be declared void under s. 32(a), (b) and (c) of the Act; and (vi) that a determination and certification as provided under s. 36 of the Act, be given. The respondents raised preliminary objections to the presentation of the petition and submitted that: (i) the petitioner failed to comply with r. 15(4) of the Election Petition Rules 1954 ('Rules') with regards to the particulars of affidavit service; (ii) the petition failed to comply with rr. 4(1)(b) and 4(4) of the Rules together with para. (3) of the election petition form prescribed

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thereunder; (iii) the presentation of the petition was out of time and therefore, in contravention of s. 38(1)(a) of the Act; (iv) the petitioner failed to comply with r. 4(1)(b) of the Rules read together with s. 32(b) of the Act because the facts and grounds pleaded were incapable of sustaining the prayers sought; and (v) in respect of the petitioner's complaints on non-compliance with Form A, ss. 5(1), 6(1) and 6(3) of the Act, the petitioner failed to comply with r. 4(1)(b) of the Rules read together with s. 32(b) of the Act for the reason that the facts and grounds pleaded were incapable of sustaining the prayers sought.

Held (upholding preliminary objections raised by respondents; dismissing petition for non-compliance with requirements of Election Offences Act 1954 and Election Petition Rules 1954):

(1) The requirement under r. 15(4) of the Rules to state in the affidavit of service the day of the week is mandatory and not merely directive. Therefore, the objection by the first respondent that the affidavit of service affirmed by one Eka Alifah Ismawi on 6 November 2020 was defective for failing to state the day of the week the petition was served on the first respondent was upheld. (para 21)

(2) The petitioner's pleadings on the issue of non-compliance with s. 5 of the Act and its alleged consequent breaches under s. 6 of the Act and regs. 23, 24 and 25 of the Regulations were lacking in facts that were material to establishing a cause of action against all the respondents. In addition, an act committed under s. 5 of the Act is not the written law on the conduct of any election. The respondents' objections on these issues were upheld. (para 41)

(3) There was no clarity on what actually was the campaign material that offended s. 11(1) of the Act. It was not sufficient that a police report was made by the petitioner's agent and that an objection was filed and served on the first respondent and the Election Commission. As far as the petition was concerned, s. 4 of the Act demanded and the decided judicial authorities held that material facts, and in this case, those relating to the campaign materials, must be clearly and sufficiently pleaded. The petition must rest on the strength and clarity of its own material facts disclosing the cause of action rather than relying on the apparent inaction or presumed admission of the relevant parties as its basis. The petition lacked material facts that were clear and precise. (paras 48, 51 & 52)

(4) The first respondent's speech preceding the distribution of the food packets could not *res ipsa loquitor* be said to have been given with the intention to corruptly influence the attendees, especially when the exact text of the speech was not reproduced. There were no material facts connecting the speech to the distribution of the food packets and when

A considered together that the speech and the food packets were given with the purpose of corruptly influencing the voters and they were so induced. Only when those material facts were pleaded, could treating amount to a corrupt practice under s. 8 of the Act. Otherwise, it was just mere treating. (para 65)

B **(5)** Having upheld the objections raised by the respondents, the issue of the petitioner's prayer for an order to copy or inspect election documents had become redundant and academic. Nevertheless, the distinction between an Election Judge and a High Court Judge under the Act and the Regulations deserved some discussion. The reading of reg. 26 of the C Regulations clearly indicates that such an order can only be granted when a Judge of the High Court is satisfied that such an inspection, copy or production is required for the purpose of instituting or maintaining an election petition. At the time when an application was made for the purpose of instituting an election petition, an Election Judge was yet to D be appointed and as such, the application could only be made to a High Court Judge. Therefore, must the petitioner run to a High Court Judge other than the Election Judge to seek such orders? This court thinks not. Since the Election Judge was already appointed and presiding over the dispute, all matters pertaining to the election petition should, for the sake of avoidance of duplicity proceedings, be heard by the Election E Judge. Therefore, in that context, the Judge of the High Court was the Election Judge. To hold otherwise was to subject the petitioner to unnecessary costs and more importantly, given the time limit for the disposal of an election petition, the risk of delays in proceedings. (para 71)

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Case(s) referred to:

Abdul Rahman Saleh v. Hj Md Fuzi Hj Ahmad Shahim & Ors [2013] 1 LNS 1322 HC ***(refd)***

Abdullah Osman v. M Asojan & Ors [2013] 1 LNS 1319 HC ***(refd)***

Ahmad Ramzi Mohamad Zubir v. Hj Abdul Hadi Awang & Ors [2009] 7 CLJ 205 HC G ***(refd)***

Alexander Vincent v. Adeh Denong @ Gabriel Adit Demong [2006] 1 LNS 173 HC ***(refd)***

Ali Amberan v. Tunku Abdullah [1969] 1 LNS 6 HC ***(refd)***

Chong Thain Vun v. Watson & Anor And Other Cases [1967] 1 LNS 29 ***(refd)***

Clarence D Bongkos Malakun v. The Returning Officer & Ors [1988] 1 LNS 182 HC ***(refd)***

Dato' Ismail Kamus v. Pegawai Pengurus Pilihan Raya (Zainal Abidin Azim) & Ors H *[2005] 2 CLJ 237 FC* ***(refd)***

Devan Nair v. Yong Kuan Teik [1967] 1 LNS 37 ***(dist)***

Dr Lee Chong Meng v. Returning Officer (Abdul Rahman Abdullah) & Ors (No 1) [2000] 3 CLJ 519 HC ***(refd)***

Dr Shafie Abu Bakar v. Pegawai Pengurus Pilihanraya N 26 Bangi & Ors And Other Petitions [2005] 5 CLJ 349 HC ***(refd)*** I

Gan Joon Zin v. Fong Kui Lun & Ors [2004] 4 CLJ 729 FC ***(refd)***

Harcharan Singh v. Mo Hinder Singh AIR [1968] SC 1500 ***(refd)***

Harris Mohd Salleh v. The Returning Officer, Ismail Majin & Ors (And Another Petition) [2001] 3 CLJ 161 HC ***(refd)***
Ignatius Stephen Malanjum v. Election Judge, Sabah & Anor [1989] 1 LNS 24 HC ***(refd)***
Mahari Endut v. Dato' Hj Mat Razali Kassim, Pegawai Pengurus Pilihan Raya Bagi Kawasan Dewan Undangan Negeri N15 Ladang & Ors [2009] 4 CLJ 488 FC ***(refd)***
Mohamad Sazali Kamilan v. Nurul Izzah Anwar & Ors [2013] 9 CLJ 782 HC ***(refd)***
Mohd Nazri Hj Din v. Dato' Seri Raja Ahmad Zainuddin Raja Hj Omar & Ors [2009] 3 CLJ 221 FC ***(refd)***
Mohd Zaid Ibrahim v. P Kamalanathan P Panchanathan & Ors [2010] 8 CLJ 608 HC ***(refd)***
Re Tanjong Puteri Johore State Election Petition; Abdul Razak Ahmad v. Datuk Md Yunos Sulaiman & Anor [1988] 1 LNS 158 HC ***(refd)***
Re Tanjong Puteri Johore State Election Petition [1988] 2 MLJ 111 ***(refd)***
Redzuan Stapha v. Tuan Mazlan Tuan Mat & Ors [2013] 1 LNS 1194 HC ***(refd)***
Richard Yap v. Mustapha [1967] 1 LNS 153 HC ***(refd)***
Ruhimin Adzim v. Bernard Dompok & Ors [2004] 1 LNS 461 HC ***(refd)***
Sabdin Ghani v. Mohamed Saidi Lampoh & 25 Other Election Petitions [1981] 1 LNS 199 HC ***(refd)***
Sani Miasin v. Yusof @ Josree Yacob & Ors [2021] 1 LNS 62 HC ***(dist)***
Suppayah Solaimuthu v. Chiong Sen Sern & Ors [2022] 6 MLRH 393 ***(dist)***
Tebin Mostapa v. Hulba-Danyal Balia & Anor [2020] 7 CLJ 561 FC ***(refd)***
Tengku Korish v. Mohamed Jusoh & Anor And Abdul Raouf v. Ibrahim Arshad & Anor And Mokhtar Abdullah v. Mokhtar Hj Daud & Anor [1969] 1 LNS 189 HC ***(refd)***
Vasantha Kumar Krishnan v. Saravanan Murugan & Ors [2014] 1 LNS 68 HC ***(refd)***
Wan Sagar Wan Embong v. Harun Taib (No 2) [2009] 1 CLJ 457 FC ***(refd)***
Wee Choo Keong v. Lee Chong Meng & Anor [1998] 1 CLJ 705 FC ***(refd)***
Wong Hua Seh v. Ding Kuong Hiing [2009] 1 CLJ 578 HC ***(refd)***
Woodward, Petitioner; Sarsons And Sadler, Respondents. Birmingham Municipal Election (1875) LR 10 CP 733 ***(refd)***

Legislation referred to:

Election (Conduct of Elections) Regulations 1981, regs. 21, 23, 24(1)(c), 25(1)(a), (b), (1A), (5), 26
Election (Postal Voting) Regulations 1981, reg. 25(6)
Election Act 1958, s. 16
Election Offences Act 1954, ss. 4, 5(1), (2), (3), (4), (5), (6)(a), (b), (c), (d), 6(1), (3), 8, 11(1)(b), (c), 32(a), (b), (c), 33(1), 34(b), 35, 36, 38(1)(a)
Election Petition Rules 1954, rr. 4(1)(b), (4), 15(1)(b), (4)

For the petitioner - Muhammad Shafee Md Abdullah, Sarah Maalini Abishegam & Thilagan Mehanathan; M/s Shafee & Co
For the 1st respondent - Lau Yi Leong, Adi Zulkarnain Zulkefli & Gowin; M/s Ling & Yi Leong
For the 2nd & 3rd respondents - Zureen Elina Hj Mohd, Nik Ahmad Marzuki, Nur Irmawatie Said, Zairani Tugiran, Noridayu Md Kassim & Muhammad Muhairi Mohamed; SFCs

Reported by Lina E

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JUDGMENT

Mohd Radzi Abdul Hamid J:

Introduction

[1] This is a decision of this court with respect to preliminary objections
B raised by each of the respondents against the petition filed by the petitioner in encl. 1 ('petition').

Background Facts

[2] The petitioner Ramasamy a/l Muthusamy stood as a candidate for
C Barisan Nasional in the 15th General Election for the Parliament constituency of Segamat (P140) whilst the first respondent R. Yuneswaran stood as the candidate standing for Pakatan Harapan ("PH"). They stood in the election together with two other candidates, namely Syed Hairoul for Parti Pejuang Tanahair ("PEJUANG") and Poobalan Ponnusamy for
D Perikatan Nasional ("PN").

[3] The first respondent won a majority of 5,669 votes over the second-highest number or votes, 17,768 votes garnered by the petitioner and was declared to be the duly elected member of Parliament for the Segamat constituency.

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[4] Following his loss, the petitioner presented to this court an election petition by virtue of s. 34(b) of the Election Offences Act 1954 on the premise that he is a person claiming to have the right to be returned at this constituency ("petition").

F **[5]** Based on the petition, the petitioner seeks the following reliefs:

(i) a declaration that the Parliamentary Election for Segamat (P140) is void;

(ii) a declaration that the first respondent was not duly elected or ought not to have been returned;

G (iii) that there has been a breach of s. 5(1) and 6(3) of the Election Offences Act 1954 ('EOA') whereby the security of the ballot papers and the secrecy of election have been breached;

(iv) an order pursuant to reg. 26 of the Election (Conduct of Elections) Regulations 1981 ('ECER') for an order to copy or inspect election
H documents pertaining to the 15th General Election at Segamat Parliamentary constituency;

(v) that the election should be declared void under s. 32(a), 32(b) and 32(c) of the EOA;

I (vi) that a determination and certification as provided under s. 36 of the EOA be given; and

(vii) costs.

Grounds Of Petition

[6] The grounds the petitioner relies on in presenting the petition and in seeking the reliefs are as follows:

(i) conduct of the first respondent's candidate representative, who failed to sign Form A before the returning officer has breached s. 5(1) of the EOA (paras. 3 and 18 of the petition);

(ii) the returning officer had failed to ensure the propriety of the procedure under s. 5 of the EOA and failed to explain the purport and effect of non-compliance with s. 5(1) of Act 5 leading to breaches of security and secrecy of the General Election (paras. 4 and 19 of the petition);

(iii) breaches of ss. 5(1), 6(1) and 6(3) of the EOA (paras. 5 and 21 of the petition);

(iv) section 5(2) to 5(6) a-d of the EOA are, in all probability breached (paras. 7 and 21 of the petition);

(v) breaches of regs. 25(1) (a) and (b) and 25(1 A), 25(5) of the ECER 1981 (para. 8 of the petition); and

(vi) the petitioner relies on s. 32(a), (b) and (c) of the EOA against the respondents.

[7] Particularly, the petitioner's complaints under the petition are broadly based on three matters:

(i) that there was non-compliance with the requirements of ss. 5(1), 6(1) and 6(3) of the EOA when the Form A on the oath of secrecy was not signed by the first respondent's representative before the returning officer and that the Form A had been pre-signed by the returning officer;

(ii) that the first respondent and/or his agent or representative had contravened s. 11(1)(c) of the EOA when they failed to state on his campaign materials the name of the printer and publisher; and

(iii) that the first respondent had committed an act of corruption under s. 11(1) read together with s. 32(a), (b) and (c) of the EOA through bribery and treating.

Preliminary Objections

[8] Following the filing of the petition, each of the respondents have raised preliminary objections to the presentation of the petition. Essentially these objections seek to move this court to dismiss the petition *ad limine*, and thereby not necessitating a trial on the substantive merits of the petition. These preliminary objections are as follows:

(i) For the first respondent:

(a) that the petitioner failed to comply with r. 15(4) of the Election Petition Rules 1954 ("EPR") with regards to the particulars of affidavit of service;

(b) that the petition failed to comply with rr. 4(1)(b) and 4(4) of the EPR read together with para. 3 of the election petition form prescribed thereunder; and

(c) that the presentation of the petition was out of time and therefore in contravention of s. 38(1)(a) of the EOA.

(ii) For the second and third respondents:

(a) that the petitioner failed to comply with r. 4(1) (b) of the EPR read together with s. 32(b) of the EOA because the facts and grounds pleaded are incapable of sustaining the prayers sought; and

(b) in respect of the petitioner's complaints with regards to non-compliance with Form A, s. 5(1), s. 6(1) and s. 6(3) of the EOA, the petitioner failed to comply with r. 4(1)(b) of the EPR read together with s. 32(b) of the EOA for the reason that the facts and grounds pleaded are incapable of sustaining the prayers sought. Even if the complaints are true (which are not admitted), they did not affect the result of the election.

Approach To Deliberations

[9] At the instruction of this court, each of the respondents had filed their respective written submissions, including replies in support of their respective objections. For the first respondent, they appear in encls. 21 and 31 whilst for the second and third respondents, they appear in encls. 19 and 32. As for the petitioner, replies were filed to all the respondents' written submissions and they appear in encls. 26 and 35.

[10] In delivering this court's decision this court shall deal with the issues in the following order:

(i) part A, on the issue of non-compliance with r. 15(4) of the EPR;

(ii) part B, on the issue of non-compliance with ss. 5, 11 and 32 of the EOA;

(iii) part C, on the issue of the petitioner's prayer for an order to copy or inspect election documents pursuant to reg. 26 of the ECER; and

(iv) part D, on the argument of the purity of elections.

Part A – Non-compliance With r. 15(4) Election Petition Rules 1954

On The Issue Of Failing To State The Day Of The Week The Petition Was Served

[11] It was contended by learned counsel for the first respondent that the petitioner's affidavit of service affirmed by Eka Alifah Ismawi on 6 November 2020, had omitted to state the day of the week the first respondent was served by way of personal service with the petition and the cause papers. That omission offended r. 15(4) of the EPR that requires the affidavit of service of the petition to state, apart from how, by whom and the date on which the documents were served, the day of the week on which they were served.

[12] It was argued that since the statutory requirements of election laws are mandatory, the requirement of r. 15(4) of the EPR must be strictly observed. Thus, the failure to state the day of the week when the petition was served on the first respondent was fatal and, on that ground alone, the petition must be struck off. Reference was made to the decisions in *Tengku Korish v. Mohamed Jusoh & Anor And Abdul Raouf v. Ibrahim Arshad & Anor And Mokhtar Abdullah v. Mokhtar Hj Daud & Anor* [1969] 1 LNS 189; [1969] 1 MLRH 271; [1970] 1 MLJ 6; *Dr Shafie Abu Bakar v. Pegawai Pengurus Pilihanraya N 26 Bangi & Ors And Other Petitions* [2005] 5 CLJ 349; [2004] 3 MLRH 450; [2005] 2 MLJ 149; [2005] 3 AMR 292, *Devan Nair v. Yong Kuan Teik* [1967] 1 LNS 37; [1967] 1 MLJ 261; *Harcharan Singh v. Mo Hinder Singh* AIR [1968] SC 1500 and *Chong Thain Vun v. Watson & Anor And Other Cases* [1967] 1 LNS 29; [1967] 1 MLRH [1968] 1 MLJ 65 for the general proposition that election laws are unique and must be adhered to strictly, failure of which will render a petition defective and liable to be dismissed.

[13] In particular, reference was made to the decisions in the cases of *Sani Miasin v. Yusof @ Josree Yacob & Ors* [2021] 1 LNS 62; [2021] 3 MLRH 126; *Redzuan Stapha v. Tuan Mazlan Tuan Mat & Or*s [2013] 1 LNS 1194; [2013] MLRHU 1375 and *Suppayah Solaimuthu v. Chiong Sen Sern & Or*s [2022] 6 MLRH 393 where the election petitions were dismissed for failure to comply with the requirements of r. 15(4) of the EPR. Specifically, in *Sani Miasin* and *Redzuan Stapha* the court held that the failure to state "the day of the week" in the affidavit of service was a fatal error.

[14] Learned counsel for the petitioner sought to argue that the requirements under r. 15(4) EPR may not necessarily be mandatory and may just be directive, which in the latter case, does not render the petition defective. The fact that the date was identified is sufficient to affirm the fact on when the petition was served on the first respondent. The absence of the "day of the week" does not confuse or prejudice the first respondent since

the day of the week can easily be determined based on the date. Therefore, it is not really material on what date the petition was served, for as long as the date was identified.

[15] For that reason the petitioner argues that the position taken by the Privy Council in *Devan Nair v. Yong Kuan Teik* (*supra*) that r. 15 of the EPR requires a mandatory construction must be looked at in the context of that decision where the facts there involved the filing of the notice of presentation of the petition out of time. Thus, *Devan Nair* was a case of clear non-compliance on a material requirement of the EPR. Learned counsel also sought to distinguish the decisions in *Sani bin Miasin* and *Suppayah Solaimuthu* on the peculiarity of their facts. In the former, it was argued that there were other issues relating to the service of the petition and not just about the absence of the particulars on the day of the week it was served. In *Suppayah Solaimuthu*, the facts involved the filing of an affidavit of service that was defective because the particulars of where the personal service of the petition on the respondent was factually incorrect and not because of the absence of any particular information in the affidavit.

[16] To bolster his arguments, learned counsel for the petitioner sought to rely on the decision in *Sabdin Ghani v. Mohamed Saidi Lampoh & 25 Other Election Petitions* [1981] 1 LNS 199; [1983] 2 MLJ 61, which held it is not mandatory under r. 4(1) (b) and 4(4) of the EPR to state the exact date of the election in the election petition.

Finding Of This Court

[17] To serve as a starting point in this court's deliberations not only on the immediate issue but also throughout this decision, it would be imperative to state that, as decided by the Federal Court in *Tebin Mostapa v. Hulba-Danyal Balia & Anor* [2020] 7 CLJ 561, in construing a statute, effect must be given to the object and intent of the Legislature in enacting the statute. Accordingly, the duty of the court is to interpret the words used by the Legislature and to give effect to those words. The court will not read words into a statute unless there is a clear reason for doing so in the statute itself. Therefore, in construing any statute, the court will look at the words in the statute and apply the plain and ordinary meaning of the words in the statute.

[18] Therefore, in interpreting the provisions of the EOA, its rules and regulations, this court should be in conformity with the guidelines set out in *Tebin Mostapha* and must further caution itself to not depart from the views expressed by the Federal Court in *Mahari Endut v. Dato' Hj Mat Razali Kassim & Ors* [2009] 4 CLJ 488; [2009] 5 MLJ 153 when deliberating and deciding on the objections raised against an election petition:

> In election cases the principles on pleadings are well settled. Strict compliance with the provisions of the Act 5, Regulations and/or Rules is required otherwise any election petition would be rendered defective and liable to be struck out *in limine*. Thus, under r. 4(1)(b) of the Election Petition Rules 1954 ('the Petition Rules 1954') it is mandatory that an election petition shall state briefly the facts and grounds relied upon to sustain the prayers sought for. The rationale for this strict requirement is that the 'the right conferred by that Act is a special kind of right unknown to the common law or equity, and the court which administers it possesses a special kind of jurisdiction (see *Theberge v. Laudry* (1876) 2 App Cas 102, *Goonesinha v. Hon CI de Kretser* [1945] AC 63 or what is said in [2009] 5 MLJ 153 at 163 *Albert Joseph Arzu v. Allan Edmund Arthurs & Anor* [1965] 1 WLR 675 as a peculiar jurisdiction). It is not a civil right but a creature of statute or special law and must be subject to the limitations imposed by it (see *Ponnuswami v. Returning Officer, Nammakkal Constituency & Ors*) [1952] SCR 218' per Raja Azlan Shah J (as His Royal Highness then was) in *Tengku Korish v. Muhamad Jusoh* [1970] 1 MLJ 6.

[19] Moving on, this court takes the position that the provisions of r. 15(4) are mandatory and not merely directive. Whilst this court found the arguments put forth by learned counsel appealing, the express requirement for the affidavit of service to state the day of the week must be given its full intent. The argument that in this day and age where the day of the week can be easily determined by use of a mobile device and therefore is not prejudicial to the first respondent cannot ignore the fact that even when mobile devices were not available back in 1954, the day of the week could quite easily be ascertained by just turning the pages of wall or table calendar or a diary. Thus, the importance that the Legislature placed back then on the requirement to state the day of the week in the affidavit of service must be taken to remain important today, mobile devices aside. In this court's view the day of the week is not immaterial simply because the day can be easily determined but because as decided in *Dr Lee Chong Meng v. Returning Officer (Abdul Rahman Abdullah) & Ors (No 1)* [2000] 3 CLJ 519; [2000] 6 MLJ 98 and *Tengku Korish v. Mohamed Jusoh & Anor* (*supr*a), an election dispute is a statutory proceedings unknown to the common law and equity and that particular feature of the law must be given special consideration and adhered to strictly.

[20] For that reason, whilst this court agrees with learned counsel for the petitioner that the decisions in *Devan Nair*, *Sani Miasin* and *Suppayah Solaimuthu* can be factually distinguished from the present petition, the legal thread that runs through all these cases, in this court's opinion, remain indistinguishable in that the requirements under r. 15(4) are anything less than mandatory. Thus, there is no distinction between a non-compliance that is serious or less serious, major or minor. Any and every non-compliance is *prima facie* fatal. The case of *Sabdin Ghani* relied on by the petitioner cannot

assist him since r. 4(1) (b) and 4(4) of the EPR make no requirement for the date of the election to be stated, unlike r. 15(4) where the day of the week is required to be stated along with the date and place where the petition was served and by whom. Therefore, to state that any one of the matter required under r. 15(4) is more or less material than the other is to make distinctions that are manifestly not provided for under the EOA and the Rules.

[21] To conclude, this court holds that the requirement under r. 15(4) EPR to state in the affidavit of service the day of the week is mandatory and not merely directive. Therefore, the objection by the first respondent that the affidavit of service affirmed by Eka Alifah Ismawi on 6 November 2020 (encl. 23) is defective for failing to state the day of the week the petition was served on the first respondent is upheld.

On The Issue Of Filing Of Enclosure 15 – Statement By Post Officer

[22] The first respondent took objection to the filing of a statement from a postal officer without the filing of an affidavit and contends that the filing of that statement was another instance of a serious non-compliance with r. 15(4) of the EPR.

[23] It was argued that the said statement is relevant to the alleged service of the petition on the first respondent, pursuant to r. 15(1)(b) of the EPR, which provides for the service of the election petition by way of pre-paid registered post. The relevant facts pertaining to how a post office notification informing the first respondent that there is a letter is (supposedly enclosing the election petition) awaiting him must be explained in and through an affidavit of service. It was further argued that r. 15(4) of the EPR provides that an affidavit of service stating, *inter alia*, how the election petition was served must be filed in court, and therefore it is procedurally incorrect that a statement by the officer in charge of a post office is filed independently from any affidavit of service. To do so is akin to a submission of evidence from the Bar.

[24] It was additionally argued that even if the statement in encl. 15 is to be accepted by this court, the statement should not carry any weight in favour of the petitioner since the statement was signed by one W. Noraizizah binti Abdul Rahman who purported herself to be the officer in charge of "Pejabat Pos Pusat Serahan Mel KL Metro B" when it should have been made and signed by the postal officer in charge of the Majidee Post Office since the registered post was being handled by the post officer of Majidee Post Office, and a post office notification, if given, must have been given by the a post officer of Majidee Post Office. It is therefore erroneous for the petitioner to ask the officer in charge of the Pos Pusat Serahan Mel KL Metro B and not that of the Majidee Post Office to sign the statement.

Finding Of This Court

[25] Since this court has upholds the first preliminary objection on the affidavit of service, the consideration of the second issue which is the statement of the postal officer becomes unnecessary. Nonetheless, for the sake of completeness, this court agrees with the argument of learned counsel for the first respondent that since r. 15(4) of the EPR requires the filing of an affidavit of service of the documents referred to in r. 15(1), all matters relevant to the matter of service, including those under sub-rr. (2) and (3) must be averred to in the affidavit of service or in a further affidavit affirmed by the person tasked with the service of the documents. In this court's view the word "statement" in sub-r. (2) should not be read in isolation but must be read together with sub-r. (2) and (4). Thus, the statement from the postal officer is not a document that may be filed independent of the affidavit of service but should form part of the matters averred to in that affidavit.

[26] In addition, the statement of the postal officer amounts to evidence of the matters in sub-r. 3(a) or (b). Since r. 15(4) requires that an affidavit be filed in the proceedings, that evidence must be tendered *via* an affidavit and not merely by filing the same in court. Since the evidence is not introduced *via* an affidavit of the person tasked with the service of the documents, hence there is no evidence before this court. The statement in encl. 15 cannot, therefore, be considered.

[27] To conclude on this point, this court upholds the objection of the first respondent on the admissibility of encl. 15.

Part B – On The Issue Of Non-compliance With ss. 5, 11 And 32 Of The EOA

Non-Compliance Of Form A, First Schedule EOA And The Alleged Related Breaches Under ss. 5 And 6 Of The EOA And reg. 25 Of The ECER

[28] Before deliberating on the objections raised by each of the respondents under this part, it would be first necessary to briefly restate for the sake of brevity the requirements of the law under r. 4(1) of the EPR.

[29] It is a requirement expressed clearly in r. 4(1)(b) of the EPR that an election petition shall briefly state the facts and grounds relied on to sustain the prayer. The word "shall" in that provision has been amply held by judicial authority to mean mandatory (see *Mohd Nazri Hj Din v. Dato' Seri Raja Ahmad Zainuddin Raja Hj Omar & Ors* [2009] 3 CLJ 221). It is mandatory that a petition must state not only the facts but also the grounds relied upon to sustain the prayer. Thus, all material facts must be pleaded to constitute a cause of action to form the basis of the prayer. The facts to be pleaded must be such as to make out a case for the petitioner. It has been consistently held that a failure to plead the facts and grounds will render the petition defective.

(See: *Gan Joon Zin v. Fong Kui Lun & Ors* [2004] 4 CLJ 729; *Mahari Endut* (*supra*); *Wan Sagar Wan Embong v. Harun Taib (No 2)* [2009] 1 CLJ 457; [2008] 6 MLJ 473; and *Mohd Nazri Hj Din v. Dato' Seri Raja Ahmad Zainuddin Raja Hj Omar & Ors* [2009] 3 CLJ 221; [2009] 3 MLJ 589).

[30] In the *locus classicus* case of *Dr Shafie Abu Bakar v. Pegawai Pengurus Pilihanraya N 26 Bangi & Ors And Other Petitions* [2005] 5 CLJ 349; [2004] 3 MLRH 450; [2005] 2 MLJ 149, VT Singham J had distilled from earlier decisions a guideline on what must be included in a petition to fit the requirement of r. 4 and they are:

(1) State a concise statement of material facts and then the fullest possible particulars;

(2) Omission of a single material fact leads to an incomplete cause of action and the petition becomes bad;

(3) The function of particulars is to present in full a picture of the cause of action to make the opposite party understand the case he will have to meet;

(4) Material facts and particulars are distinct matters. Material facts will mention statement of fact and particulars will set out the names of persons with the date, time and place;

(5) Material facts will show the complete cause of action and the particulars will give the necessary information to present a full picture of the cause of action;

(6) In stating the material facts it will not do merely to quote the words of the section because then the efficacy of the material facts will be lost;

(7) An election petition without the material facts is no election petition at all. A petition which merely cites the section cannot be said to disclose a cause of action.

[31] Returning now to the objections collectively raised by all the respondents, it is their core contention that the petition suffers from lack of facts, uncertainty and imprecision as required under r. 4 of the EPR and does not support the grounds upon which the petition rests. This court will now deal with them in turn.

Non-Compliance Of Form A, First Schedule EOA And The Alleged Related Breaches Under ss. 5 And 6 Of The EOA And s. 25 Of The ECER

[32] The petitioner submits that the petition has laid out all the concise statements of facts, grounds and particulars with each of his allegations. It is contended that there is a sufficient and clear narration of facts that on 24 November 2022, the petitioner had lodged police report Segamat 012865/22. The petition had pleaded that the returning officer's signature

was placed on the Form A without the presence of the first respondent's candidate representative by the name of Daniel Duraisamy. The Form A was allegedly pre-signed and when the declaration of secrecy was not adhered to the election was tarnished by breaches of secrecy.

[33] All the respondents contend that paras. 1 to 21 of the petition had failed to plead facts which are material to support the petition on this issue. The main contentions are collectively stated as follows:

(i) that the petitioner failed to plead the fact that the said Daniel Duraisamy was either an "officer, clerk, interpreter, candidate, agent and any other person authorised to attend any proceedings connected with the issue or receipt of postal ballot papers, or at a polling station, or at the counting of votes" within the meaning of s. 5(1) of the EOA;

(ii) the petitioner failed to plead the fact that the said Daniel Duraisamy had indeed attended the said proceedings; and the fact that the said Daniel Duraisamy had attended such proceedings, without first making an oath of secrecy substantially in Form A in the First Schedule;

(iii) the petitioner failed to plead as a material fact, the date, time and place where the said Daniel Duraisamy had actually attended any of the proceedings mentioned in s. 5(1) of the EOA;

(iv) that the petitioner failed to plead any particulars pertaining to the "duty that the first respondent's candidate representative allegedly took upon himself as claimed under para. 2 of the petition.

(v) with regard to the petitioner's contention of corollary non-compliance of ss. 6(1) and 6(3) of the EOA, that the petitioner also failed to plead the material facts and the particulars as to how the security and secrecy of the ballot papers could be in doubt and the exact information allegedly communicated to other people. The petitioner has also failed to plead the identity of the other people, voters or candidates elsewhere who had allegedly received the said information.

(vi) with regard to the alleged breaches of ss. 5(2) and 5(6)(a) to (d) of the EOP, the petition had merely expressed a speculation, and not a fact of a breach when the petition stated that there was a probability of breaches. That speculation is obvious when the petitioner failed to plead the material facts and particulars necessary to established the alleged breaches of ss. 5(2), 5(3), 5(4), 5(5) and 5(6)(a) to (d) of the EOA including, among others: (i) the name of the person who had allegedly divulged or communicated the information sought to be protected by the abovementioned provisions; (ii) the exact information, of the types specified in the abovementioned provision, which was allegedly divulged or communicated to another person in breach of the

abovementioned provisions; (iii) the name of the recipient of the protected information; and (iv) the place at which the communication of the said information had allegedly occurred.

(vii) with regard to the petitioner's allegation of corresponding breaches of regs. 25(1)(a) and (b) and 25(1A), 25(5) of the ECER on the requirement of secrecy pertaining to the conduct and procedure of elections, that the petitioner failed to set out the material facts such as the name of the presiding officer involved; the polling station, place or stream at which the procedure described in the Third Schedule had taken place; and the name of the person who had not taken the oath of secrecy but was allowed to see the numbers printed on the relevant ballot papers.

[34] Apart from the common issues raised by each of the respondent on the matters enumerated above, the second and third respondents additionally contended that the petitioner's complaints against the second and third respondents are premised on the allegation of commission of election offences by an authorised person in an election under s. 5(1) of the EOA and that provision affords no ground to declare an election void under s. 32(b) of the EOA because s. 5 is not a written law relating to the conduct of election referred to in the first limb of s. 32(b). The written law relating to the conduct of election referred to in the first limb of s. 32(b) of the EOA is the ECER. Since the petitioner failed to plead which provision of the ECER applies to the alleged non-compliance of Form A, then s. 32(b) of the EOA cannot come to the aid of the petitioner. Reference was made to the decisions in *Dr Shafie Abu Bakar* (*supra*) and *Abdul Rahman Saleh v. Hj Md Fuzi Hj Ahmad Shahim & Ors* [2013] 1 LNS 1322; [2014] 10 MLJ 789 and *Abdullah Osman v. M Asojan & Ors* [2013] 1 LNS 1319; [2015] 8 MLJ 110 on the need to distinguish a breach under the EOA and the ECER and the applicability of s. 32(b) of the EOA.

[35] In conclusion, all the respondents argued that contrary to what is required by s. 32(b) of the EOA, the petitioner has failed to plead the material facts showing how the result of the election had been affected by the alleged non-compliance. In particular, the second and third respondents argued that petitioner failed to show how the non-compliance affected the accuracy of the counting of the votes, as the first respondent enjoyed a majority of 5,669 votes. More importantly, the petitioner is silent as to whether he or his agent has made any protest pursuant to reg. 24(1)(c) of the ECER in order to ascertain that all ballot papers are accounted for.

[36] In counterargument, learned counsel for the petitioner submitted that the word "any other person" other than an officer, clerk, interpreter, candidate and agent under s. 5(1) of the EOA is wide enough to include Daniel Duraisamy and there is no cause for any confusion to arise as to his position as a person authorised by the first respondent. The material facts on

the non-signing of Form A before the returning officer and that the Form A was pre-signed by the returning officer were sufficiently pleaded as establishing the cause of action and any more would be the inclusion of evidence which is not required under r. 4 of the EOA.

[37] It was further argued that the concerns of secrecy in an election is a matter that must be viewed seriously by the court as exemplified by the decision of Wan Yahya J in *Re Tanjong Puteri Johore State Election Petition; Abdul Razak Ahmad v. Datuk Md Yunos Sulaiman & Anor* [1988] 1 LNS 158; [1988] 2 MLJ 111. The act of pre-signing Form A and the failure of the returning officer in ensuring that the oath of secrecy is taken and executed by Daniel Duraisamy before him suggests partiality and infers that the election is not clean and therefore justifies the reliefs sought under s. 32(b) of the EOA. On that basis, the allegations of related breaches under regs. 21 and 25 of the ECER are relevant and material.

Finding Of This Court

[38] After considering the arguments put forth by the respondents and the replies by the petitioner, this court is constrained to disagree with the arguments put forth by the respondents. This court finds that whilst the petitioner had pleaded the fact that a police report was filed, there was an absence of those material facts raised by the respondents as enumerated in para. 35 above. In this court's view, those facts are necessary to present a full picture of the petitioner's cause of action and they do not just constitute evidence that will be adduced at the trial. The burden on the petitioner to plead those facts became heavier when the petitioner had linked only a single event of alleged non-signing of the Form A and pre-signing of the Form A to a host of domino effect breaches under ss. 4, 5 and 6 of the EOA and regs. 23, 24 and 25 of the ECER in justifying to seek an avoidance of the entire election under s. 32 of the EOA.

[39] Of greater importance is for the petitioner to plead material facts showing how that single act of impropriety, if true, affected the results of the election, in particular the majority of 5,669 votes the first respondent secured over the petitioner. This court agrees with the position taken by the court in *Vasantha Kumar Krishnan v. Saravanan Murugan & Ors* [2014] 1 LNS 68; [2015] 8 MLJ 45, that it is futile for the petitioner to give a long list of transgressions or non-compliance with the law if he otherwise fails to explain how the transgressions or non-compliance with the law affected the result of the election. As held by the Federal Court in *Dato' Ismail Kamus v. Pegawai Pengurus Pilihan Raya (Zainal Abidin Azim) & Ors* [2005] 2 CLJ 237; [2005] 3 MLJ 193, the petitioner must show the nexus between the act complained of and the result of the election. To not establish the nexus is to render the petition a non-starter.

[40] With regard to the question of whether or not a non-compliance under s. 5 of the EOA amounts to a breach in the conduct of an election, there is no doubt in this court's mind that the making of oath in Form A is indeed one of the matters performed making up the entire gamut of steps and processes taken in the conduct of any election. Although the EOA and the ECER do not define the words "conduct of any election" a perusal of the list of matters in s. 16 of the Election Act 1958 under which the ECER is made, shows that the act of making an oath of secrecy in Form A would in all probability fall under s. 2(e). Notwithstanding that the requirement of making an oath of secrecy in Form A is provided in s. 5 of the EOA, it cannot be taken as a provision with regard to the conduct of elections since s. 5 is provided as an election offence under Part II of the EOA. Therefore, as far as the conduct of elections is concerned, the governing law must be the ECER and only a non-compliance with the ECER will amount to a non-compliance with a written law relating to the conduct of any election found in s. 32(b) of the EOA. This court adopts the same approach taken in *Dr Shafie Abu Bakar* (*supra*); *Abdul Rahman Saleh v. Hj Md Fuzi Hj Ahmad Shahim & Ors* [2013] 1 LNS 1322; [2014] 10 MLJ 789; and *Abdullah Osman v. M Asojan & Ors* [2013] 1 LNS 1319; [2015] 8 MLJ 110 on the interpretation of "any written law relating to the conduct of any election" in s. 32(b).

[41] In conclusion, this court finds that the petitioner's pleadings on the issue of non-compliance with s. 5 of the EOA and its alleged consequent breaches under s. 6 of the EOA and regs. 23, 24 and 25 of the ECER are lacking in facts that are material to establishing a cause of action against all the respondents. In addition, this court finds that an act committed under s. 5 of the EOA is not the written law on the conduct of any election. All the respondent's objections on these issues are therefore, upheld.

On The Contravention Of s. 11(1)(c) Of The EOA When The First Respondent And/Or His Agent Or Representative Had Allegedly Failed To State On His Campaign Materials The Name Of The Printer And Publisher

[42] The petitioner in his petition pleaded particulars such as photographic evidence of the election advertisement boards, which were taken by Mr Syahrul Syazwan bin Salehin, the lawyer appointed by Barisan Nasional and Mr Tay Kok Waw (Deputy Youth of Malaysia Chinese Association "MCA"), both whom are candidate representatives and/or agents of the petitioner. The petitioner submits that the first respondent and/or his agents had with his knowledge or consent during the election, printed, distributed and or posted flyers which did not comply with the requirement under s. 11(1)(c) of the EOA.

[43] The first respondent's objection on this issue is that the petitioner had failed to plead the material facts, concisely and with precision, pertaining to the election advertisement boards and the flyers, in particular: (i) the name of the agent or agents who had allegedly erected the election advertisement boards; (ii) the nexus between the election advertisement boards and the election; (iii) the contents of the election advertisement boards; (iv) the day and time the election advertisement boards were allegedly erected; (v) the proximity and relationship between the said agents and the first respondent and their appointment by the first respondent.

[44] The first respondent further argued that the petitioner had merely stated in the petition that: (a) the alleged failure to comply with s. 11(1)(c) of the Election Offences Act 1954 renders the election null and void, without making any reference to the provisions under s. 32 of the EOA; and (b) the election should be declared void if the management of the election was not conducted substantially in accordance with the election law, irrespective of whether the irregularities complained of had affected the election result or not, without making any reference to the provisions under s. 32 of the EOA. To add to that, it was argued that the petitioner failed to plead material facts showing how that such non-compliance affected the result of the election.

[45] In response, it was argued for the petitioner that at para. 29 of the petition, the petitioner had listed 11 locations where the election advertisement boards were put up by the first respondent and/or his agents. The petitioner had made a police report before the elections itself of the corrupt practice by the first respondent under s. 11(1)(c) and full details have been provided. On 17 November 2022, the petitioner, through his candidate representative, Encik Samsuri bin Ismail filed a police report outlining the first respondent's violation of s. 11(1)(c) of the Election Offences Act 1954. On the same day, Encik Mohd Azami bin Othman, the election agent for the Petitioner, sent a letter to Pejabat Pilihanraya Negeri Johor ("SPR") and the managing officer of SPR raising the said issues and requesting for SPR to take appropriate action. The police report was attached to the abovementioned letter, which was acknowledged by both parties. It was also pleaded that on 18 November 2022, Encik Mohd Azami bin Othman, the election agent for the petitioner, sent a notice of objection to the first respondent which was served to the first respondent's election agent's address. The said letter was acknowledged by Encik Mohd Ridzuan Miranda, staff member of the first respondent. Despite receiving the notice of objection, the first respondent did not take the necessary steps and/or action to rectify the said issue nor did the first respondent respond to the letter dated 18 November 2022.

[46] Based on those facts, it was argued that the first respondent knew of the objections and of the offending campaign materials but chose to not take any action. That inaction was indicative enough of the first respondent's knowledge or consent and complicity in committing the offence under s. 11 of the EOA either by himself or through his agents.

[47] It was also argued that since s. 11 of the EOA falls under Part III of the Act on corrupt practices, *prima facie* it is a serious matter as far as the conduct of free and clean elections are concerned. Since s. 11 provides that the posting or distribution of campaign materials which does not bear the names and addresses of its printer and publisher is a corrupt practice, there is no requirement under s. 32(c) of the EOA to show how that corrupt practice affected the results of the election.

Finding Of This Court

[48] After hearing arguments on this issue, this court finds that there was no clarity on what actually was the campaign material that offended s. 11(1)(c) of the EOA. In para. 24, the petitioner pleaded that the campaign materials included billboard posters, banners and flyers and then at paras. 27 and 28 under the heading "Facts" the petitioner referred to advertisements, handbills, flyers and posters. Then, at para. 29 under the heading "Particulars" the petitioner referred to advertisement boards but not advertisements or billboard posters. The matter is further compounded by the use of the word "or" in the examples of the campaign materials in paras. 27 and 28, suggesting that the list was meant to be a net to be cast as widely as possible without identifying with certainty the campaign material said to offend s. 11 of the EOA. The word "or" therefore suggests generality resting on uncertainty (see *Mohamad Sazali Kamilan v. Nurul Izzah Anwar & Ors* [2013] 9 CLJ 782; and *Alexander Vincent v. Adeh Denong @ Gabriel Adit Demong* [2006] 1 LNS 173; [2007] 1 MLJ 432).

[49] Even if this court were to accept the advertisement boards as the offending campaign material, there is still the problem of lack of material facts as contended by the first respondent. In this court's view, although paras. 27 and 28 pleaded that the said materials contained pictures of the first respondent and referred to the election in the P.140 constituency, there are no facts on by whom and when the boards were erected and flyers distributed. That the petition used the word "first respondent and/or his agent" suggests again that there is uncertainty on who actually committed the acts. There would probably have been more certainty if the word "or" was omitted after the word "and" to show that the acts were committed by both the first respondent and his agent. By using the word "or" the petitioner is unsure whether the first respondent or his agent committed those acts.

[50] It is incumbent, therefore, upon the petitioner to plead the proximity between the first respondent and the said agent. Although the Federal Court in *Harris Mohd Salleh v. The Returning Officer, Ismail Majin & Ors (And Another Petition)* [2001] 3 CLJ 161; [2001] 3 MLJ 433 held by reference to the decision by Raja Azlan Shah J (as he then was) in *Ali Amberan v. Tunku Abdullah* [1969] 1 LNS 6; [1970] 2 MLJ 15b, that a candidate at an election

is responsible for the acts of his agents who are not and would not necessarily be agents under the common law of agency, consideration must be given to the words "prominent members" employed by His Lordship Raja Azlan Shah in his judgment. Thus, in this court's view, the fact that the agent was in fact a person authorised by the first respondent either expressly or by necessary implication due to the prominence of that person in the first respondent's party and campaign must be pleaded. As held by the Federal Court in *Wan Sagar* (*supra*), there must be shown an appointment of such agent by the respondent:

> [21] ... With respect, we find the pleading in the petition filed by the appellant on agency rests on mere conjecture. Although the principles applicable in election law are wider, we are of the view the principles should not be so extended as to cast the net of agency too wide to include even ordinary party supporters. The principles as laid down in the case of *Ali Amberan v. Tunku Abdullah* [1970] 2 MLJ 15 do not extend that far. Quoting *Taunton*'s case, 182 Raja Azlan Shah J (His Royal Highness as he then was) approved the passage in the judgment reading it as follows:
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> > The rule of law has long been established that in parliamentary matters we are not to consider the strict rule of common law agency ... it has long been established that where a person has employed an agent for the purpose of procuring his election, he, the candidate, is responsible for the act of that agent in committing corruption, though himself not only did not intend it but even bona fide did his best to hinder it.
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> [22] On the strength of the above authority it is our judgment that there has to be an element of 'appointment' wherein there is a nexus or connection between the named or identified persons alleged to be the 'agents' and the first respondent as the candidate. The appellant has to plead this to allow the first respondent to meet the case. This element of 'appointment' is present in the statement of the law as defined by Raja Azlan Shah J (His Royal Highness as he then was) in the case of *Ali Amberan* at p. 18 reproduced as follows:
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> > Inspired and guided by English and Indian election law I take the view that the rule of extended scope of agency holds good in our election law; and other view would tend to make it impossible to preserve the purity and freedom of elections. Accordingly, a candidate at an election is responsible for the acts of agents who are not or would not necessarily be agents under the common law of agency. Therefore, a political party and its prominent members who set up the candidate and with his consent, either expressly or by necessary implication, sponsor his cause and work actively to promote his election, may aptly be regarded as 'agents' of the candidate for election purposes.

[51] Therefore, it is not sufficient that a police report was made by the petitioner's agent and that an objection was filed and served on the first respondent and the Elections Commission. As far as the petition is concerned, s. 4 of the EOA demands and decided judicial authorities have held that material facts and in this case those relating to the campaign materials must be clearly and sufficiently pleaded. In this court's view, the petition must rest on the strength and clarity of its own material facts disclosing the cause of action rather than relying on the apparent inaction or presumed admission of the relevant parties as its basis.

[52] This court finds no qualm with the arguments put forth by learned counsel for the petitioner on the need to protect the sanctity and purity of elections as reflected in the cases referred to namely, *Harris Mohd Salleh v. Ismail bin Majin* (*supra*); *Woodward, Petitioner; Sarsons And Sadler, Respondents. Birmingham Municipal Election* (1875) LR 10 CP 733; *Richard Yap v. Mustapha* [1967] 1 LNS 153; [1968] 1 MLJ 159; and *Dato' Ismail bin Kamus* (*supra*), but a petition should not be based on inferences and presumptions but on actual and material facts. As far as the grounds of the petition under this issue is concerned, this court agrees with the first respondent that the petition lacks material facts that are clear and precise.

[53] In conclusion on this issue, this court upholds the objection of the first respondent.

On The Alleged Act Of Corruption Under s. 11(1) Read Together With ss. 32(a), (b) And (c) Of The EOA Through Bribery And Treating

[54] The petitioner pleaded that the first respondent had on 18 November 2022 between the hours of 8am and until 10am, located outside the Meng Teck Toh Tong Temple within the parliamentary constituency of Segamat had corruptly given food to voters for the purpose of corruptly influencing voters to cast their votes for the first respondent. The petitioner claims that the first respondent had also given a speech which preceded the distribution of parcels of food to those present at the event. The fact of the food distribution was recorded in photographs that were uploaded on a Facebook account. A police report was filed against the matter on 19 November 2022.

[55] The objections raised by the first respondent on this issue are that: (i) the petitioner did not plead how many voters were involved during the alleged treating at the said temple whether the total number of participants would constitute a majority of 69,360 voters in the Segamat parliamentary constituency; (ii) the petitioner also failed to plead how the said incident had affected or may be reasonably supposed to have affected the result of the election; (iii) the reference and reliance on s. 32(b) of EOA on the heading of Part C was wrong as treating, even if true, if not an act coming within the meaning of conduct of elections; and (iv) the petitioner's use of the words

"first respondent and/or agents and/or servants" shows uncertainty and imprecision in the petition and it is necessary for the petitioner to plead the nexus between the said "agents" or "servants" of the first respondent and the material facts pertaining to knowledge and consent of the first respondent to the action of his "agents" or "servants". A

[56] In reply, the petitioner argues that on the authority of *Ahmad Ramzi Mohamad Zubir v. Hj Abdul Hadi Awang & Ors* [2009] 7 CLJ 205; [2009] 4 MLJ 867, there is no requirement for the petitioner to plead any facts and grounds to show the nexus between the incidents and the first respondent. The purport of s. 32(a) of the EOA is to declare the election of the winner void where it can be proved that general bribery, general treating or general intimidation have so extensively prevailed that they may reasonably be supposed to have affected the result of the election irrespective of the culpability of the candidate. Therefore, it is not necessary for the petitioner to plead the exact number of voters involved in the pleaded treating incident. The focus of the pleading should be on whether the alleged incident of treating, if proven, may reasonably be supposed to have affected the result of the election. The petitioner only needs to show that the treating was extensive enough to constitute general treating under s. 32(a) of the Act. B C D

[57] In this present case, learned counsel for the petitioner contends that he has pleaded an incident of treating, which if proven, may reasonably be supposed to have affected the result of the election. As such, the petitioner has pleaded the necessary material facts in support of the ground to declare the election result void under s. 32(a) of the EOA. The petitioner is not required to plead any facts to show the nexus between the treating incident and the first respondent. E F

[58] On the objection that treating is not a conduct of any election, learned counsel for the petitioner argues that the phrase "conduct of any election" in s. 32(b) of the EOA should be given a broad and liberal interpretation. The conduct of an election includes all activities and events that lead to the declaration of the election result. It is not limited to the mechanical process of administering the polling stations and counting the votes. G

Findings Of This Court

[59] Touching first on the question whether treating can be regarded as a conduct of an election, this court's answer is in the negative. As alluded to earlier examples of the conduct of an election can be found in s. 16 of the Election Act 1958 and it can be deduced that treating by a candidate, whether by himself or his agent, is not a conduct of an election for the simple reason that treating is not a process that must be undertaken in conducting an election. Treating falls outside that scope and is a private act undertaken by a candidate as part of his campaign. It is not a requirement whether under H I

A the Election Act or the ECER. Therefore, to give a broad and liberal interpretation to the phrase "conduct of any election" to include treating has no basis.

[60] This court agrees with the petitioner that the act of treating can be a corrupt practice as defined under s. 8 of the EOA and undermine the integrity
B of an election process by influencing voters to vote for or refraining from voting a particular candidate or party. Since treating falls under Part III of the EOA on Corrupt Practices, then there is no bar for the petitioner to base his petition on this issue either on ss. 32(a) and/or (c) of the EOA. However, the petitioner's duties under each of those sub-section are different and
C cannot be considered in the same breath.

[61] Now, under s. 32(a) there are three aspects to that provision that must be considered before arriving at a conclusion about whether the requirements of that provision are fulfilled: (a) the phrase "general treating"; (b) the phrase "so extensively prevailed"; and the phrase (c) "affected the result of the
D election". With respect to the word "general treating", it is this court's interpretation that the word "general" before the word "treating" connotes a multiple and not singular act and not general in the sense of the number of people attending a single event. That the act is multiple and not singular is indicated by the use of the word "extensively" after that. "Extensive"
E means covering a large area or a great range (see https://dictionary.cambridge.org/dictionary/english/extensive). Thus, a single act of treating at one venue cannot, by common sense, be regarded as extensive since it is limited to only one location. Moving next to the word "prevailed", Cambridge Dictionary defines it to mean to get control or influence in a
F particular situation or to be common in a group of people or in an area at a particular time (see: https://dictionary.cambridge.org/dictionary/english/prevail?q=prevails. Therefore, when the phrase "general treating" and "extensively prevailed" are read in the context of s. 32(a) of the EOA, they should mean and refer to multiple acts of treating that had taken place in
G more than one place in the same parliamentary constituency during the period allowed for campaigning and such acts of treating may be reasonably supposed to have affected the result of the election.

[62] In another aspect, the word "general" also means that the act of treating may not have necessarily been committed by the candidate with his
H knowledge or consent or committed by his agent as otherwise provided in s. 32(c) for a corrupt practice. Therefore, where the treating is done by members of the public at multiple places whether or not with the knowledge or consent of the candidate or committed by his agent and those acts of treating were done with the purpose of corruptly influencing voters to vote
I for their named candidate or not vote for any other candidate, then general treating can be said to have been committed under s. 8 and 32(a) of the EOA.

[63] Reverting to the act of treating complained of under this petition, in this court's view the single event at the Meng Teck Toh Tong Temple on 18 November 2022 cannot obviously amount to general treating that has extensively prevailed. It follows therefore, that the single act of treating at Meng Teck Toh Tong Temple cannot be presupposed to have affected the result of the election under s. 32(a).

[64] Moving then to s. 32(c) of the EOA, it would be necessary for the act of treating to be a corrupt practice that the petitioner pleads material facts that show, *inter alia*: (i) that the attendees of the event are in fact voters in the P.140 Segamat parliamentary constituency; (ii) the identity of the recipients of the food and (iii) that the food received had corrupted the recipient into voting in favour of the first respondent. As decided by His Lordship Azahar Mohamed J (as he then was) in *Mohd Zaid Ibrahim v. P Kamalanathan P Panchanathan & Ors* [2010] 8 CLJ 608, it is necessary to name the recipients of the gift to make out the allegation of bribery under s. 8 of the EOA. Similarly, it would be necessary to name the recipients of the food packs to make out the case that the recipients were in fact voters in that constituency and that they were corruptly induced to vote in favour of the first respondent and refrain from voting other candidates in the same election. Applying the decision of the Federal Court in *Wong Hua Seh v. Ding Kuong Hiing* [2009] 1 CLJ 578; [2009] 2 MLJ 325, the petitioner must prove that the attendees and recipients were corrupted and induced by the treating.

[65] For that matter, it is this court's view that the first respondent's speech preceding the distribution of the food packets cannot *res ipsa loquitor* be said to have been given with the intention to corruptly influence the attendees, especially when the exact text of the speech was not reproduced. There are no material facts connecting the speech to the distribution of the food packets and when considered together that the speech and the food packets were given with the purpose of corruptly influencing the voters and they were so induced. Only when those material facts are pleaded can treating be amount to a corrupt practice under s. 8 of the EOA, otherwise it is just mere treating.

[66] Lastly, this court agrees with the contention of learned counsel for the first respondent that the petitioner fell into uncertainty on the face of the petition when he had pleaded at para. 42 that the treating was organised by the "first respondent and/or his agents and/or his servants". Clarity and certainty of a material fact is fundamental to an election petition. By pleading in the alternatives, the possible identity of the organizer of the treating, notwithstanding that the first respondent may have been present at the event, the first respondent have been prejudiced in that he is not clearly informed of the basis of the allegation against him. That the organiser could be a person or body of persons other than the first respondent, it falls on the petitioner

to establish, following the discussions earlier on the decisions in *Harris Mohd Salleh v. The Returning Officer, Ismail Majin & Ors (And Another Petition)* [2001] 3 CLJ 161; [2001] 3 MLJ 433 and *Ali Amberan v. Tunku Abdullah* [1969] 1 LNS 6; [1970] 2 MLJ 15b, the nexus between the first respondent and such agents or servants.

[67] To conclude on this issue, this court therefore upholds the first respondent's objection to this ground.

Part C – The Petitioner's Prayer For An Order To Copy Or Inspect Election Documents

[68] The petitioner in his EP also seeks from this court an order pursuant to reg. 26 of the ECER 1981 for copies or inspection of election documents pertaining to the constituency.

[69] The second and third respondents object to the legality of that prayer and submit that "the judge" in reg. 26 of the ECER refers only to the High Court Judge and not the election judge. It was contended that reliefs which a petitioner can claim in an EP is provided only under within the confines of s. 35 of the EOA. Since the granting of an order to copy or inspect is not a relief provided under that provision, the petitioner's application for that relief under this petition cannot be sustained.

[70] The petitioner argues that given the six months' time limit for which election cases are to be disposed of in the election court, it clearly does not make sense that this reg. 26 should be exercised by a judge of the ordinary High Court and not an election judge. Section 33(1) of the EOA states that every election petition shall be tried by the Chief Judge or by a judge of any High Court nominated by the Chief Judge for the purpose. Hence, it is argued, by reading the law, it is clear that reg. 26 of the ECER falls within the confines of an election petition and very much under the jurisdiction of the election judge to hear the matter. In any event, such discretion falls within the inherent jurisdiction of the High Court Judge sitting as an election judge. Reference was made to the decisions in *Wee Choo Keong v. Lee Chong Meng & Anor* [1998] 1 CLJ 705; [1998] 1 MLJ 434; *Ignatius Stephen Malanjum v. Election Judge, Sabah & Anor* [1989] 1 LNS 24; [1989] 2 MLJ 433; and *Ruhimin Adzim v. Bernard Dompok & Ors* [2004] 1 LNS 461; [2005] 1 MLJ 345 on this issue.

This Court's Finding

[71] After having upheld the objections raised by each of the respondents, in this court's view, this issue has become redundant and academic. Nevertheless, for the sake of completeness, the distinction between an election judge and a High Court Judge under the EOA and reg. 26 of the ECER deserves some discussion. The reading of reg. 26 of the ECER clearly

indicates that such an order can only be granted when a judge of the High Court is satisfied that such an inspection, copy or production is required for the purpose of instituting or maintaining an election petition. It is clear that at the time when an application is made for the purpose of instituting an election petition, an election judge is yet to be appointed and as such the application can only be made to a judge of the High Court. However, after the petition is filed, an election judge is appointed. Therefore, must the petitioner run to a judge of the High Court other than the election judge to seek such orders? This court thinks not. The reason is that since the election judge is already appointed and presiding over the dispute, all matters pertaining to the election petition should for the sake of avoidance of duplicity proceedings, be heard by the election judge. Therefore, in that context, the judge of the High Court is the election judge. To hold otherwise is to subject the petitioner to unnecessary costs, and more importantly, given the time limit for the disposal of an election petition, the risk of delays in proceedings.

Part D – On The Argument Of Purity Of Elections

[72] Learned counsel for the petitioner submitted to this court that the respondents have full knowledge of the charge against them and the particulars and grounds are replete. The required particulars of facts must be considered as a whole, as held by the Federal Court case of *Mahari Endut* (*supra*). By the fact that Form A was not signed by the candidate representative nor in front of the returning officer, the multiple and possible breaches flowing from can only be determined at the full trial and when all witnesses are called and documents are called up and exhibited.

[73] The petitioner further argues that the petition is premised, *inter alia* on serious allegations of corrupt practice and ss. 8 and 11(1)(b) of the EOA and it goes to the heart of a fair election to an extent it can turn an election into a sham election. The petitioner additionally argued that he has submitted extensively on the purity of elections and the need to maintain the public's confidence in the electoral system. Whilst the petitioner recognises that there must be strict adherence to the laws governing election petitions, there must also be recognition to the glitches, irregularities and substantive defects in the election process and that elections petitions are not tossed aside on mere technicalities. For those reasons, the petition must be considered in its entirety. Reference was made, *inter alia*, to *Dr Shafie Abu Bakar* (*supra*); *Clarence D Bongkos Malakun v. The Returning Officer & Ors* [1988] 1 LNS 182; [1989] 2 MLJ 442; *Dato' Ismail Kamus* (*supra*), and *Re Tanjong Puteri Johore State Eelection Petition; Abdul Razak Ahmad v. Datuk Md Yunos Sulaiman & Anor* [1988] 1 LNS 158; [1988] 2 MLJ 111.

[74] In response to those arguments, this court agrees unreservedly to the contention of the learned counsel for the petitioner that the purity of any election is the hallmark of a true democracy and must be preserved and protected not only by the mechanisms of the electoral process but also by the courts. Nonetheless, as much as the right of a petitioner to be heard on his petition must be given its due process, the rights of respondents to be heard on the expectation that a given petition is presented in accordance with the requirements of the law must also be equally given. Preliminary objections must therefore be given room to be heard as a measure to ensure that any election petition is not presented flawed with many legal shortfalls that deprive the court jurisdiction to hear and determine the petition on its full merits at a trial. Any objection cannot be brushed aside just because it is merely technical and appears insignificant. Technical insignificance is not the measuring cup, it is the non-compliance with the requirements of the law. Therefore, as frustrating as it may be to a petitioner that his or her petition ends up being dismissed on preliminary objections touching on technicalities, it must be accepted that the law and its compliance involve technical aspects that must be adhered to, more so in special laws such as the election laws.

[75] Unfortunately, for the petitioner this court does not share his sentiment that the election of the parliamentary constituency P.140 Segamat was a sham because of the alleged failure to comply with: (i) section 5 with regards to Form A; (ii) section 11(c) with regards to the alleged non-disclosure of the name and dress of its publisher and printer; and (iii) section 8 on the act of treating. They are distinct and independent acts and thus, cannot be considered together to form the conclusion that the entire election was a sham, and thus the purity of it was grossly tainted. Whilst this court agrees with the spirit of the decision in *Tanjong Puteri*, that decision must be seen within the confines of the facts of that case.

[76] In *Tanjong Puteri*, Wan Yahya J found that the election was flawed by the disparity in the number of votes pointing towards an error in the counting of votes, the failure to mix postal ballots contrary to the directive contained in reg. 25(6) of the Election (Postal Voting) Regulations 1981 and the irregular conduct of the presiding officer in transporting the ballot boxes, which gave rise to speculation of propriety and fair play. Despite having found all that, there was no conclusion made that the election was a shame, only that it was not conducted in accordance with the election laws. What can be seen from the facts of that decision is that all the matters complained of rested with the authority entrusted with the conduct of the election and concerned the reliability of the collection, counting and delivery of the votes themselves which are at the very pith of the election unlike the allegations in the present petition where they involve only one allegation of procedural impropriety with regards to Form A against the returning officer whilst the allegations of impropriety of campaign (materials and treating are postulated

against the first respondent. Therefore, in the absence of facts *prima facie* showing or raising the irresistible inference of some collusion between all the respondents to commit acts of corruption or illegal acts that affected the result of the election, they cannot be considered cumulatively to show that the P.140 election was a sham.

[77] In this court's view, even if all the grounds were to be considered cumulatively, the petition does not show how under s. 32(a) and (b) of the EOA the majority votes of 5,669 garnered by the first respondent over the petitioner would not have been achieved if not for the matters aforesaid. This court cannot set the petition for trial merely to satisfy an inquiry on whether the petitioner could have won the election based on general allegations, conjectures and incomplete facts. It can only be brought to trial after sufficient, clear, precise and certainty of material facts disclosing the grounds of cause of action against the respondents are pleaded in the petition.

Decision

[78] Therefore, having upheld all the preliminary objections raised by each of the respondents this court finds no hesitation in dismissing this petition for non-compliance with the requirements of the Election Offences Act and the Election Petition Rules with costs of RM30,000 to be paid to the first respondent and RM30,000 to the second and third respondent jointly.

[79] In accordance with s. 36(1), I declare that the first respondent was duly elected as the Member of Parliament for Segamat Constituency (P.140) and shall certify this decision to the Election Commission in due course.